

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1152

AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-5-20 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

Chapter 20. Assistive Device Warranties

Sec. 1. This chapter does not apply to assistive devices purchased by, leased by, or transferred to a consumer before July 1, 1999.

Sec. 2. As used in this chapter, "assistive device" means any new device, including a demonstrator, that a consumer purchases or accepts transfer of in Indiana that is used for a major life activity. The term includes the following devices:

- (1) Manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual.
- (2) Hearing aids, telephone communication devices for the deaf (TTD, TTY), assistive listening devices, visual and audible signal systems, and other aids that enhance an individual's ability to hear.
- (3) Voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that

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enhance a sight impaired individual's ability to communicate.

(4) Any other device that enables an individual with a disability to communicate, see, hear, or maneuver.

The term does not include surgical implants, dental and ocular prostheses, batteries, tires, or nonfunctional accessories.

Sec. 3. As used in this chapter, "collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the reasonable costs of obtaining an alternative assistive device. The term does not include the cost of an alternative assistive device.

Sec. 4. As used in this chapter, "consumer" means any of the following:

(1) An individual who is a person with a disability as defined in the federal Americans With Disabilities Act (42 U.S.C. 12101(2)) or the individual's legal representative:

(A) who has purchased an assistive device from an assistive device dealer or manufacturer for purposes other than resale;

(B) to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of any warranty established by this chapter; or

(C) who leases a new assistive device from an assistive device lessor under a written lease.

(2) A person that purchases or leases an assistive device using state or federal funds for the use of an individual with a disability.

(3) An insurer or self-insurer that purchases or leases an assistive device for the use of an individual with a disability.

Sec. 5. As used in this chapter, "dealer" means a person who is in the business of selling or dispensing assistive devices.

Sec. 6. As used in this chapter, "demonstrator" means an assistive device used primarily for the purpose of demonstration to the public or loan to a consumer.

Sec. 7. As used in this chapter, "manufacturer" means a person that manufactures or assembles assistive devices. The term includes the agents of that person, an importer, a factory branch, and any warrantors of the person's assistive device. The term does not include a professional who fabricates, without charge, a device for use in the course of treatment.

Sec. 8. (a) As used in this chapter, "nonconformity" means a condition or defect that significantly impairs the use, value, function, or safety of an assistive device or any of its components.



(b) The term does not include a condition or defect of the assistive device that:

(1) is the result of:

- (A) abuse, misuse, or neglect by a consumer;
- (B) modifications or alterations not authorized by the manufacturer;
- (C) normal wear, including accumulation of ear wax, perspiration, or moisture;
- (D) normal use that may be resolved through a fitting adjustment, routine maintenance, preventative maintenance, or proper care; or
- (E) a consumer's failure to follow any manufacturer's written service and maintenance guidelines furnished at the time of purchase; or

(2) indicates the need for:

- (A) routine adjustment, modification, or upgrade; or
- (B) an adjustment:
 - (i) due to an exacerbation in the condition of the individual with a disability; or
 - (ii) to improve the fit of the assistive device.

Sec. 9. For purposes of this chapter, a "reasonable attempt to repair" has occurred if, within one (1) year after the date of first delivery of the assistive device, either of the following applies:

- (1) The same nonconformity has been subject to repair two (2) or more times by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive device, and the nonconformity continues to exist and interfere with the assistive device's operation.
- (2) The assistive device is out of service because of nonconformities, with no fungible loaner available, for a cumulative total of at least thirty (30) business days (not including any necessary time in shipment), due to repair by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive device. For purposes of this subdivision a loaner hearing aid is considered fungible with the consumer's hearing aid if the loaner hearing aid improves the consumer's hearing. This subdivision does not apply if the repairs could not be performed because of conditions beyond the control of the manufacturer, its agents, or authorized dealers, including war, invasion, strike, fire, flood, or other natural disasters.

Sec. 10. Notwithstanding any other law, in addition to any



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express warranty furnished by the manufacturer of an assistive device, the manufacturer is also considered to have warranted both of the following for a period of one (1) year from the date of first delivery to the consumer purchasing or leasing the assistive device in Indiana:

- (1) That the assistive device, when used as intended, will be free from any nonconformity.
- (2) That any nonconformity will be repaired (including parts and labor) by the manufacturer or its agent, without charge to the consumer.

Sec. 11. If, after reasonable attempt to repair, a nonconformity is not repaired, the consumer must return the assistive device to the dealer and the manufacturer shall do either of the following:

- (1) Do both of the following:
 - (A) Accept return of the nonconforming assistive device.
 - (B) Not later than fourteen (14) days after return of the assistive device, refund to the consumer or consumers:
 - (i) the full purchase price of the assistive device, excluding the cost of services associated with the device's initial purchase, together with reasonable collateral costs, less a reasonable allowance for use; or
 - (ii) if the device was leased, all lease payments made through the date of return together with a proportional share of any required deposit.

A refund of the amounts described in this clause to a consumer or consumers shall be made to the extent of each consumer's bearing the initial purchase or lease cost and bearing of any collateral costs.

- (2) Accept return of the nonconforming assistive device and replace the nonconforming assistive device with one (1) of comparable market value, function, and usefulness as appropriate to the consumer within thirty (30) business days of the return, not including, in the case of a hearing aid, scheduling time for professional fitting and dispensing.

Sec. 12. An assistive device returned due to a nonconformity under this chapter by a consumer or an assistive device lessor in Indiana or any other state may not be sold or leased again in Indiana unless full disclosure of the reason for the return is made to any prospective buyer or lessee.

Sec. 13. (a) The remedies afforded by this chapter are:

- (1) cumulative;
- (2) not exclusive; and



(3) in addition to any other legal or equitable remedies available to the consumer.

(b) In addition to any other remedies available, a consumer who suffers loss as a result of any violation of this chapter may:

(1) bring an action to recover damages; or

(2) submit the matter to arbitration under IC 34-57-2.

Sec. 14. (a) A manufacturer's exclusion or limitation of the warranties or consumer remedies provided by this chapter is void.

(b) A purported waiver of rights to legal action or arbitration by a consumer within an assistive device purchase agreement is void.

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